

Twin City Sign Service and its alter ego Sign Services and James Shoemaker, Mark Shoemaker and Tim Shoemaker, Individuals and Sign & Pictorial Painters Local Union No. 820 affiliated with International Brotherhood of Painters and Allied Trades. Case 17-CA-14920

February 24, 1993

SUPPLEMENTAL DECISION AND ORDER

BY MEMBERS DEVANEY, OVIATT, AND
RAUDABAUGH

On February 19, 1991, the National Labor Relations Board issued a Decision and Order,¹ *inter alia*, ordering Twin City Sign Service and its alter ego Sign Services to make whole certain of its unit employees for loss of earnings and other benefits resulting from its failure to adhere to the terms of its collective-bargaining agreement with the Union by failing to pay the contractual wage rates and by failing to make payments into the Union's health and welfare fund and retirement fund in violation of the National Labor Relations Act. On November 25, 1991, the United States Court of Appeals for the Eighth Circuit enforced the Board's Order.

A controversy having arisen over the enterprises and individuals liable to remedy the Board's Order and over the amount of backpay due, on October 26, 1992, the Regional Director for Region 17 issued a compliance specification and notice of hearing alleging the liability of James Shoemaker, Mark Shoemaker, and Tim Shoemaker, individually, as well as the liability of the original Respondent, Twin City Sign Service and its alter ego Sign Services, for the amount due under the Board's Order, and notifying these Respondents that they should file a timely answer complying with the Board's Rules and Regulations. Although properly served with a copy of the compliance specification, the Respondents James Shoemaker, Mark Shoemaker and Tim Shoemaker failed to file an answer.

By letter dated November 30, 1992, the Region advised the Respondents James Shoemaker, Mark Shoemaker and Tim Shoemaker that no answer to the compliance specification had been received and that unless an appropriate answer was filed by December 7, 1992, summary judgment would be sought. The Respondent James Shoemaker filed an answer. However, Respondents Mark Shoemaker and Tim Shoemaker filed no answer.²

¹ 301 NLRB No. 106 (not printed in bound volumes).

² James Shoemaker's answer does not purport to answer for Mark or Tim Shoemaker. James Shoemaker's answer is signed by James Shoemaker and does not respond to par. 1(i) of the compliance specification which alleges that Mark and Tim Shoemaker are individually liable to remedy the unfair labor practices of Respondent Twin City Sign Service and Respondent Sign Services. Under these cir-

On January 4, 1993, the General Counsel filed with the Board a Motion to Transfer Proceeding to Board and for Summary Judgment against Mark Shoemaker and Tim Shoemaker, with exhibits attached. On January 7, 1993, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondents Mark Shoemaker and Tim Shoemaker again filed no response. The allegations in the motion and in the compliance specification are therefore undisputed as to Mark Shoemaker and Tim Shoemaker.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on the Motion for Summary Judgment

Section 102.56(a) of the Board's Rules and Regulations provides that the Respondent shall file an answer within 21 days from service of a compliance specification. Section 102.56(c) of the Board's Rules and Regulations states:

If the respondent fails to file any answer to the specification within the time prescribed by this section, the Board may, either with or without taking evidence in support of the allegations of the specification and without further notice to the respondent, find the specification to be true and enter such order as may be appropriate.

According to the uncontroverted allegations of the Motion for Summary Judgment, the Respondents Mark Shoemaker and Tim Shoemaker, despite having been advised of the filing requirements, has failed to file an answer to the compliance specification. In the absence of good cause for the Respondents Mark Shoemaker and Tim Shoemaker's failure to file an answer, we deem the allegations in the compliance specification to be admitted as true as to them, and grant the General Counsel's Motion for Summary Judgment as to Respondents Mark Shoemaker and Tim Shoemaker.

FINDINGS OF FACT

Respondents Mark Shoemaker and Tim Shoemaker's Liability

At all material times, the Respondent Sign Services was a partnership consisting of Mark Shoemaker and Tim Shoemaker or a sole proprietorship operated by Mark Shoemaker. At all material times, Respondent Sign Services was engaged in the manufacture, fabrication, installation and servicing of signs and related items from a house located at 9009 West 81st Street, Overland Park, Kansas. Since Respondent Sign Services was at all material times a partnership/sole propri-

umstances, we find that the answer of James Shoemaker does not constitute an answer on behalf of Mark and Tim Shoemaker.

etorship, Respondents Mark Shoemaker and Tim Shoemaker are individually liable to remedy the unfair labor practices of Respondent Sign Services and its alter ego Respondent Twin City Sign Service.

CONCLUSION OF LAW

Respondents Mark Shoemaker and Tim Shoemaker are individually liable to remedy the unfair labor practices of Respondent Sign Services and its alter ego Respondent Twin City Sign Service. Accordingly, we conclude that the net backpay due the discriminatees is as stated in the compliance specification and we will order payment by the Respondents Mark Shoemaker and Tim Shoemaker as set forth in the compliance specification.³

³ Although the answer of James Shoemaker denied liability, it does not contest the amounts set forth in the compliance specification. Accordingly, it is not necessary to refer that matter for hearing. Cf. *Transportation by La Mar*, 281 NLRB 508, 510 (1986).

ORDER

The National Labor Relations Board orders that the Respondents Mark Shoemaker and Tim Shoemaker, their agents, successors, and assigns, shall make whole the Fund and the individuals named below, by paying them the amounts following their names, with interest to be computed in the manner prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987), minus tax withholdings required by Federal and state laws:

Sign and Pictorial Painters Local	
Union No. 820 Open End	
Health and Welfare Fund	\$553.07
James Farrow	28.65
James Campbell	6.60
Tim Shoemaker	85.50
Mark Shoemaker	82.50
Eric Schupp	42.60

IT IS FURTHER ORDERED that this matter is remanded to the Regional Director for Region 17 for further proceedings regarding the liability of James Shoemaker.